

## Message Text

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PAGE 01 ANKARA 00082 01 OF 02 041033Z

11

ACTION EB-11

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DRC-01 /076 W

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P 040821Z JAN 74

FM AMEMBASSY ANKARA

TO SECSTATE WASHDC PRIORITY 2284

INFO AMEMBASSY BEIRUT UNN

LIMITED OFFICIAL USE SECTION 1 OF 2 ANKARA 0082

E.O. 11652 N/A

TAGS: ETRN, TU

SUBJ: CIVAIR NEGOTIATIONS: TEXT OF TURKISH DRAFT ON CAPACITY  
PROCEDURES

REF: ANKARA 0076

FOLLOWING IS TEXT OF TURKISH PROPOSAL OF JANUARY 3, 1974  
FOR NEW DRAFT ON CAPACITY PROCEDURES AS MENTIONED IN REFTEL:

QUOTE

CAPACITY PROCEDURES

1. THE TWO DELEGATIONS TOOK NOTE OF THE PROVISIONS  
OF ARTICLE XII OF THE AGREEMENT RELATING TO CAPACITY. EACH  
DELEGATION GAVE ASSURANCE THAT IT WAS NOT THE INTENTION OF  
THEIR RESPECTIVE GOVERNMENTS TO CONDONE PATENTLY UNREASONABLE  
CAPACITY AND EXPRESSED THE VIEW THAT, WITHOUT PREJUDICE TO  
THE RIGHT OF THE AUTHORISED AIRLINES OF BOTH CONTRACTING  
PARTIES TO EXERCISE INITIAL MANAGEMENT JUDGEMENT IN THE  
ESTABLISHMENT OF CAPACITY LEVELS, IT WAS THE RESPONSIBILITY  
OF THE RESPECTIVE CONTRACTING PARTIES TO REVIEW THE  
OPERATIONS OF THEIR RESPECTIVE AIRLINES TO ENSURE THAT  
CAPACITY LEVELS WERE NOT INAPPROPRIATE OR INCONSISTENT  
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PAGE 02 ANKARA 00082 01 OF 02 041033Z

WITH TRAFFIC REQUIREMENTS BETWEEN THE TWO COUNTRIES.

2. IN ORDER TO ENSURE THIS OBJECTIVE, THE TWO  
DELEGATIONS REACHED THE FOLLOWING UNDERSTANDING IN REGARD  
TO THE PROCEDURES TO BE FOLLOWED:

(A) SCHEDULE CHANGES

(1) PRIOR TO THE FILING OF ANY SCHEDULE(S)  
THAT WOULD INCREASE CAPACITY ON OR AFTER MARCH 31, 1976,  
IN RELATION TO THAT IN EFFECT IN THE PREVIOUS CORRESPONDING  
PERIOD, THE CONTRACTING PARTY WHOSE AIRLINE(S) HAS PROPOSED  
SUCH A CHANGE SHALL SATISFY ITSELF THAT THE CHANGES PROPOSED  
WOULD NOT INTRODUCE UNJUSTIFIED CAPACITY.

IT WILL, THEREAFTER, TRANSMIT TO THE OTHER  
CONTRACTING PARTY SUCH SCHEDULE(S) AT LEAST SIXTY DAYS  
PRIOR TO ITS EFFECTIVE DATE, UNLESS A SHORTER PERIOD OF  
TIME IS AGREED UPON THE CONTRACTING PARTIES IN SPECIAL  
CIRCUMSTANCES. SCHEDULE CHANGES REFLECTING NO INCREASE IN  
CAPACITY SHALL BE SUBMITTED BY THE INTERESTED AIRLINE(S)  
DIRECTLY TO THE AERONAUTICAL AUTHORITIES OF THE OTHER PARTY  
AT LEAST THIRTY DAYS PRIOR TO THEIR EFFECTIVE DATE.

(2) THE CONTRACTING PARTY RECEIVING THE FILING  
OF CAPACITY INCREASE IN ACCORDANCE WITH SUBPARAGRAPH (A)  
MAY, IF IT CONSIDERS THE CAPACITY INCREASE TO BE EXCESSIVE,  
REQUEST CONSULTATION FOR A JOINT REVIEW OF THE CAPACITY  
SITUATION IN ORDER TO DETERMINE IF THE CAPACITY INCREASE  
IS JUSTIFIED. SUCH CONSULTATIONS SHALL BE REQUESTED WITHIN  
FIFTEEN DAYS AFTER THE FILING OF THE CAPACITY INCREASE AND  
INITIATED AT A MUTUALLY AGREED SITE WITHIN THIRTY DAYS OF  
SUCH FILING. EVERY EFFORT SHALL BE MADE TO REACH AGREEMENT  
IN THE CONSULTATIONS.

(3) IN THE EVENT THAT SUCH CONSULTATIONS RESULT  
IN AGREEMENT THAT THE CAPACITY INCREASE PROPOSED BY THE  
AIRLINE(S) INVOLVED IS NOT UNJUSTIFIED SUCH AIRLINE(S) SHALL  
BE FREE TO IMPLEMENT THE PROPOSED SERVICE.

(4) IN THE EVENT THAT SUCH CONSULTATIONS RESULT  
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PAGE 03 ANKARA 00082 01 OF 02 041033Z

IN AGREEMENT THAT ALL OR PART OF THE CAPACITY INCREASE  
PROPOSED BY THE AIRLINE(S) INVOLVED IS UNJUSTIFIED THE  
PROPOSED SERVICE, OR THAT PART OF THE PROPOSED SERVICE WHICH  
HAS BEEN DETERMINED TO BE UNJUSTIFIED, WILL NOT BE PLACED  
IN EFFECT AND THE GOVERNMENT OF THE AIRLINE(S) INVOLVED  
SHALL TAKE APPROPRIATE STEPS TO MAINTAIN OR ACHIEVE THE  
AGREED LEVEL.

(5) IN THE EVENT THAT DIFFERENCES ARISE DURING SUCH CONSULTATIONS CONCERNING THE CAPACITY INCREASE, SUCH CAPACITY INCREASE WHICH MAY BE PLACED IN EFFECT SHALL NOT EXCEED 2 PERCENT OF THE LEVEL OF THE PRECEDING PERIOD. HOWEVER, CONSULTATIONS, IF REQUESTED, SHALL BE RENEWED AT A MUTUALLY AGREED SITE WITHIN SIXTY DAYS AFTER THE CONCLUSION OF THE PERIOD DURING WHICH THE CAPACITY INCREASE WAS OPERATED IN ORDER TO DETERMINE WHETHER ACTUAL OPERATIONS HAVE JUSTIFIED THE ABOVE CAPACITY INCREASE.

(6) IN ANY CONSULTATIONS HELD IN ACCORDANCE WITH SUBPARAGRAPH (5), THE TWO CONTRACTING PARTIES SHALL EXAMINE TRAFFIC AND OTHER RELEVANT DATA RELATED TO THE PERIOD UNDER REVIEW TO DETERMINE WHETHER THE CAPACITY OF THE AIRLINE INVOLVED HAS BEEN APPROPRIATE. IF THE CONTRACTING PARTIES FIND THAT THE CAPACITY HAS BEEN APPROPRIATE, THE AIRLINE(S) SHALL BE FREE TO SET THE LEVEL OF CAPACITY IN THE NEXT PERIOD IN ACCORDANCE WITH SUBPARAGRAPH (A). IF THE GOVERNMENTS DO NOT FIND THAT THE LEVEL OF CAPACITY WAS APPROPRIATE, THE LEVEL OF CAPACITY OF THE AIRLINE(S) INVOLVED SHALL BE ESTABLISHED FOR THE NEXT PERIOD EITHER (1) AT A LEVEL DETERMINED BY MUTUAL AGREEMENT OF THE CONTRACTING PARTIES, OR (2) AT THE SAME LEVEL WHICH PREVAILED DURING THE PERIOD PRIOR TO THE PERIOD UNDER REVIEW.

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PAGE 01 ANKARA 00082 02 OF 02 041052Z

11

ACTION EB-11

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LIMITED OFFICIAL USE SECTION 2 OF 2 ANKARA 0082

(B) CONSULTATIONS TO REVIEW EXISTING SERVICES

(1) CONSULTATIONS MAY BE INVOKED BY EITHER PARTY TO REVIEW EXISTING CAPACITY ON A PARTICULAR ROUTE OR ROUTE SEGMENT WHENEVER SUCH PARTY BELIEVES THAT THE CAPACITY BEING OFFERED BY AN AUTHORIZED AIRLINE OF THE OTHER PARTY IS UNJUSTIFIED PROVIDED THAT THE CAPACITY IN QUESTION HAS BEEN IN OPERATION FOR SIX MONTHS OR MORE.

(2) CONSULTATIONS SHALL BE INITIATED AT A MUTUALLY AGREED SITE WITHIN A PERIOD OF THIRTY DAYS AFTER THE DATE OF THE RECEIPT OF A REQUEST FOR REVIEW OF THE CAPACITY LEVELS BEING OFFERED ON THE SERVICES IN QUESTION. IN THE EVENT THAT THE PARTIES FAIL TO REACH AGREEMENT WITHIN THIRTY DAYS AFTER THE INITIATION OF SUCH CONSULTATIONS, THE AUTHORIZED AIRLINE(S) CONCERNED MAY CONTINUE TO OPERATE CAPACITY AT THE LEVEL TO WHICH OBJECTION HAS BEEN RAISED.

(3) IF, AFTER A FURTHER PERIOD OF SIX MONTHS, THE PARTY WHICH ORIGINALLY REQUESTED THE CONSULTATIONS UNDER SUBPARAGRAPH (1) ABOVE STILL BELIEVES THAT THE CAPACITY OFFERED IS UNJUSTIFIED, IT MAY REQUEST THAT CONSULTATIONS CONCERNING THE CAPACITY IN QUESTION BE RENEWED. SUCH CONSULTATIONS WILL BE INITIATED AT A MUTUALLY AGREED SITE LIMITED OFFICIAL USE

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PAGE 02 ANKARA 00082 02 OF 02 041052Z

WITHIN THIRTY DAYS OF THE RECEIPT OF THE REQUEST. IN SUCH RENEWED CONSULTATIONS, - IN WHICH INTER ALIA DUE REGARD SHALL BE ACCORDED TO THE EXPANSION OF SERVICES OF THE (DESIGNATED) AIRLINE(S) OF THE REPUBLIC OF TURKEY - UNLESS THE PARTIES FIND THAT THE LEVELS OF CAPACITY ARE JUSTIFIED, THEY SHALL DETERMINE THE REVISED LEVEL OF OPERATIONS FOR THE AIRLINE(S) INVOLVED AND THE PERIOD OF TIME DURING WHICH THAT LEVEL SHOULD BE MAINTAINED. IN THE ABSENCE OF AGREEMENT THE SERVICE(S) SHALL BE OPERATED FOR SUBSEQUENT PERIODS AT A CAPACITY LEVEL 2 PERCENT LOWER THAN THE LEVEL OF THE ESTABLISHED BASE PERIOD.1/ (EMBASSY COMMENT: SEE ANKARA 0076.)

(C) PROVISION OF INFORMATION

IN CONNECTION WITH THE CONSULTATIONS REFERRED TO IN THE PRECEDING PARAGRAPHS, BOTH PARTIES SHALL PROVIDE INFORMATION RELEVANT TO THE TRAFFIC AND CAPACITY SITUATION TO BE REVIEWED IN THE COURSE OF THE CONSULTATIONS.

(D) U.S. AIRLINE OPERATING LEVELS UNTIL MARCH 31, 1976

(1) FOR THE PURPOSE OF THESE CAPACITY PROCEDURES A SERVICE IS DEFINED AS A FLIGHT WHICH ORIGINATES IN THE

TERRITORY OF ONE CONTRACTING PARTY WITH A DESTINATION IN THE TERRITORY OF THE OTHER CONTRACTING PARTY OR ANY THIRD COUNTRY POINT BEYOND, AS WELL AS A FLIGHT WHICH PROCEEDS BEYOND THE TERRITORY OF THE OTHER CONTRACTING PARTY TO THE TERRITORY OF THE FIRST CONTRACTING PARTY, AS DETERMINED IN THE RELEVANT ANNEXES OF THE AGREEMENT.

(2) WITHOUT PREJUDICE TO THE GENERAL RIGHT ACCORDED THE AIRLINES OF BOTH CONTRACTING PARTIES TO INCREASE CAPACITY IN ACCORDANCE WITH MANAGEMENT JUDGEMENT UNDER THE PROVISIONS OF THE AGREEMENT AND UNDER THE PROCEDURES ESTABLISHED HEREIN, THE UNITED STATES AIRLINE HAS INDICATED THAT CAPACITY FOR THE PERIOD JANUARY 1, 1974 UNTIL MARCH 31, 1976, WILL BE AS FOLLOWS; UNLESS OTHERWISE AGREED:

(A) FROM JANUARY 1, 1974 UNTIL MARCH 31, 1975

I.

II.

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PAGE 03 ANKARA 00082 02 OF 02 041052Z

(2) FROM MARCH 31, 1975 UNTIL MARCH 31, 1976

I.

II.

(3) WITHOUT PREJUDICE TO THE GENERAL RIGHT UNDER THE AGREEMENT FOR THE DESIGNATED AIRLINES OF EACH CONTRACTING PARTY TO SUBSTITUTE AND UTILIZE THEIR EQUIPMENT IN ACCORDANCE WITH MANAGEMENT JUDGEMENT, ANY DESIGNATED UNITED STATES AIRLINE MAY SUBSTITUTE, DURING THE PERIOD UNTIL MARCH 31, 1976, ONE SERVICE OPERATED WITH 707 AIRCRAFT FOR ONE SERVICE OPERATED WITH 747 AIRCRAFT OR VICE VERSA, PROVIDED THAT THIS CHANGE IN AIRCRAFT SHALL NOT INVOLVE ANY INCREASE OR DECREASE IN THE CAPACITY ESTABLISHED IN ACCORDANCE WITH THESE PROCEDURES.

1/ THE ESTABLISHED BASE PERIOD LEVEL SHALL BE THAT LEVEL OF OPERATIONS IN EXISTENCE PRIOR TO THE LAST INCREASE BY THE AIRLINE(S) CONCERNED. IF THERE HAS BEEN NO INCREASE IN THE SERVICE SINCE THE DATE THAT THESE PROCEDURES CAME INTO EFFECT, THE ESTABLISHED BASE PERIOD LEVEL SHALL BE THE APPROPRIATE OPERATING LEVEL DESCRIBED IN 2 (D).

END QUOTE.

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## Message Attributes

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